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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-188640

DATE: JAN 8 1977

**MATTER OF: Adrienne Ahearn et. al. - Retroactive Promotions
for "Career Ladder" Employees**

DIGEST: Where Internal Revenue Service (IRS) failed to submit promotion recommendations for 21 career ladder employees on a timely basis, causing promotions to be delayed beyond dates employees became eligible for advancement, IRS requests whether it may consider delay an unjustified personnel action and award retroactive promotions under Back Pay Statute, 5 U. S. C. § 5503. Since employees had no vested right to be promoted under statute, regulation or collective bargaining agreement, delay of promotions was not improper and corrective action would not be authorized under Back Pay Statute.

This action concerns a request from the Director, Personnel Division, Internal Revenue Service (IRS), Department of the Treasury, Washington, D. C., for a decision as to whether the IRS may retroactively adjust the promotion dates of 21 employees in the IRS District Office, Jacksonville, Florida.

The employees were serving in "career ladder" positions during the period from July 1973 to March 1974, and recommendations for their promotions were not submitted on a timely basis so as to permit these employees to be promoted when they became eligible. As a result, each promotion action was made retroactively effective, wherein each standard form SF-50 was annotated with the remark "Delay Due to Administrative Error." Shortly thereafter the Civil Service Commission conducted an onsite evaluation of the IRS District Office in Jacksonville, Florida, and cited these retroactive promotions as violations of Commission regulations. As a result, the Commission required IRS to take corrective action with regard to these improper retroactive promotions.

The IRS took the corrective action required by the Commission and set the effective date of each promotion on or after each SF-50 was issued by the Personnel Office. However, the IRS does not desire to penalize employees involved for failure of agency officials to submit the promotion recommendations on a timely basis. The IRS questions whether this failure of agency officials may be

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considered an unjustified or unwarranted personnel action under the Back Pay Act of 1956, 5 U.S.C. § 5596, as to authorize corrective action in the form of retroactive promotions for these employees to dates of initial eligibility together with backpay for the retroactive period.

We have long held that the effective date of a change in salary resulting from administrative action is the date action is taken by the administrative officer vested with necessary authority or a subsequent date specifically fixed by him. 21 Comp. Gen. 95 (1941). Retroactive promotions as such are not sanctioned by this Office. 33 Comp. Gen. 140 (1953); 39 *id.* 583 (1960). As a general rule, an administrative change in salary may not be made retroactively effective in the absence of specific statutory authority to do so. We have, however, permitted retroactive adjustments of salary rates in certain cases when errors in computations occurred as a result of a failure to carry out nondiscretionary administrative regulations or policies. In addition, we have permitted retroactive adjustment of salary rates in certain cases where employees have been deprived of a right granted by statute or regulation. Normally, Federal employees, including employees serving in career ladder positions, have no vested right to be promoted at any specific time. However, an agency may through the promulgation of regulations or the negotiation of a collective bargaining agreement, vest in specified employees the right to be promoted on an ascertainable date as provided by the regulation, or agreement. B-173318-48, September 29, 1970. 54 Comp. Gen. 19 (1974), 54 *id.* 493 (1974), 54 *id.* 538 (1974).

Since it does not appear from the record that any of the employees here involved had a vested right pursuant to collective bargaining agreement or regulation to be promoted on an ascertainable date, it cannot be said that these employees underwent an unjustified or unwarranted personnel action because their promotions were delayed beyond the date they first became eligible for promotion. Accordingly, neither the Back Pay Statute, 5 U.S.C. § 5596, nor any other statute or regulation of which we are aware would authorize the IRS to grant retroactive promotions and backpay to the employees here involved. Any erroneous payments made to these employees should either be collected or considered for waiver under 5 U.S.C. § 5584.

DORRIS
R. J. KEHLER
Comptroller General
of the United States